IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No. 339 of 1989

For Approval and Signature:
HON'BLE MISS JUSTICE R.M.DOSHIT

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to civil judge ?

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POPATLAL MANILAL SHAH & 1 - Applicant(s)

Versus

AMRUTLAL H MODI & 2 - Opponent(s)

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Appearance :
SERVED BY AFFIX.(N) for Petitioner No(s).: 1,2.
MR KV SHELAT for Respondent No(s).: 1, 2,3.
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CORAM : HON'BLE MISS JUSTICE R.M.DOSHIT
Date : 20/07/2005

ORAL JUDGMENT

Feeling aggrieved by the judgment and order dated 10th February, 1989 passed by the appellate bench, Small Causes Court, Ahmedabad in Civil Appeal No. 394 of 1981, the respondents-defendants in HRP Suit No. 748 of 1978, have preferred the present Revision Application under Section

29 (2) of the Bombay Rents, Hotel & Lodging House Rates Control Act, 1947 {hereinafter referred to as, "**the Rent Act**'}.

The respondents are the owners of the property bearing Survey No. 384, 387-4 and 196-1-1, situated at Shahpur Ward No. 2, Ahmedabad. Two rooms on the first floor of the suit property were leased to the defendant for a monthly rent of Rs. 50/= exclusive of municipal taxes and education cess. The respondents-plaintiffs instituted HRP Suit No. 748 of 1978 in the Court of Small Causes, Ahmedabad for recovery of possession of the suit premises on the grounds that the plaintiffs required the suit premises reasonably and *bona fide* for their personal use and that the defendants had, for six months preceding the date of the suit, ceased to use the suit premises for the purpose for which it was let.

The learned trial Court dismissed the suit for possession by its judgment and order dated 29th September, 1981. Feeling aggrieved, the plaintiffs preferred Civil Appeal No. 394 of 1981 before the appellate bench, Small Causes Court, Ahmedabad. The appellate bench, by *impugned* judgment and order held that the plaintiffs required the suit premises reasonably and *bona fide* for personal use and that greater hardship should cause to the plaintiffs

in the event, the decree for eviction were refused. Accordingly, the lower appellate court passed decree for possession against the defendant. Feeling aggrieved, the defendant has preferred the present Revision Application.

Mr. Shelat has contested the Revision Application and has supported the judgment and order of the lower appellate Court. He has submitted that it is proved on evidence that the plaintiff has a large family and the only accommodation available to the plaintiff is one room admeasuring 35’ x 10’. It has also been proved that in the same room, the plaintiff is carrying on his wholesale business in edible oil. Considering the need of the plaintiff and his family, particularly six school going children of various age, the lower appellate court believed the genuineness, reasonableness and the *bona fide* of the plaintiff’s requirement. Therefore, the finding recorded in favour of the plaintiff does not warrant interference by this Court.

I have perused the pleadings and the evidence on record. The judgment and order of the lower appellate court do not warrant interference by this Court in exercise of its revisional *jurisdiction.* Besides, fresh notice issued to the petitioner has returned un-served. It is reported that the defendant-Club is closed for past six

years. Therefore also, no interference is warranted. The Revision Application is dismissed with cost. Rule is discharged. *Interim* relief stands vacated.

{Miss R.M Doshit, J.}

*Prakash**